IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

Crl.MC.No. 748 of 2007()

CC.651/2004 of JUDL.MAGISTRATE OF FIRST CLASS -I, HARIPAD

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PETITIONER: COMPLAINANT

IBRAHIMKUTTY, ALUNKAL HOUSE,
VEEYAPURAM.

BY ADV. SRI.RASHEED C.NOORANAD
SRI.G.GOPAKUMAR (CHERTHALA)

RESPONDENTS: ACCUSED

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1. ABDUL KHADER, S/O ABOOBACKER KUNJU,
PONDIYIL NOUSHAD MANZIL, ANARI VADAKKU,
CHERUTHANA VILLAGE.

2. STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.GEORGE SEBASTIAN
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.748 of 2007

Dated this the 10th day of April, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. He preferred an appeal. The appeal came up for hearing before the learned Sessions Judge. At a late stage, the petitioner filed an application to receive two documents. The appellate court considered whether the prayer for reception of documents at the appellate stage can be accepted. The complainant stoutly opposed the application. The complainant disputed the genuineness of the two documents produced. The complainant contended that there was no whisper of the existence of such documents before the trial court. The complainant further pointed out that in the reply notice, which was issued subsequent to the dates of the documents sought to be produced, there was no reference at all to those two documents. The learned Sessions Judge, in these circumstances, came to the conclusion that the prayer to receive additional documents at the appellate stage cannot be accepted. Accordingly, the learned Sessions Judge proceeded to pass the impugned order.

2. Invoking the extraordinary inherent powers of this Court, the said order, copy of which is produced as Annexure-5, is sought to

be assailed. I must alertly be cognizant of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. Has justice failed ? Is there miscarriage of justice ? Is there abuse of process of the court ? These are the crucial considerations which this Court would employ while considering a prayer for invocation of the powers under Section 482 Cr.P.C.

3. The learned Sessions Judge has already heard the appeal and the same is waiting for judgment, it is submitted at the Bar. I do not want to embark on any detailed discussion on the merits of the rival contentions, lest it should adversely affect the interests of the parties. Suffice it to say that, having considered all the relevant inputs, I am not persuaded to agree that Annexure-5 order warrants or justifies any interference by invocation of the powers under Section 482 Cr.P.C.

4. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that I have not chosen to express any opinion on merits of the contentions raised by the rival contestants. The petitioner's option to challenge the impugned order passed by the appellate court in an appropriate proceedings in revision later along with the judgment in the appeal shall remain unfettered by the dismissal of this Crl.M.C.

(R.BASANT, JUDGE)

rtr/-